IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:26.03.2007

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE S. TAMILVANAN

WRIT APPEAL No.1007 of 2004
and WAMP.No.1814 of 2004

Rathinam .. Appellant/Petitioner in WP

vs.

1.The Special Tahsildar (ADW)
Devakottai
Sivaganga District.

2.The District Collector
Sivaganga District
Sivaganga. .. Respondents/Respondents in -do-

Writ Appeal filed under Clause 15 of the Letters Patent against the order of learned single Judge in W.P.No.6164 of 1997 dated 13.10.2003 petition presented to this Court under Article 226 of the constitution of India to issue a writ of Certiorari calling for the records of the respondents relating to the Notification issued by the II Respondent in Na.Ka.W.1/81198/90 dated (-1-97)as published in the Pasumpon Muthuramalingam District Gazettee (Extraordinary) Sivagangai in Gazette No.7 dated 20.1.1997, Sivagangai and quash the same.

For appellant : Mrs. Vijayakumari Natarajan

For respondents : Mr. P. Subramanian
Government Advocate
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JUDGMENT

(Judgement of the Court was delivered by P. SATHASIVAM,J.)

Aggrieved by the order of the learned single Judge dated 13.10.2003 made in W.P.No.6164 of 1997, the writ petitioner, by name, Rathinam has preferred the above writ appeal.

2. Heard the learned counsel for the appellant as well as the learned Government Advocate for the respondents.

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3. It is seen that on a representation by the houseless Adi

Draviders of A. Kalapoor Village in Thiruppathur Taluk, an extent of 0.10.0 Htrs. of dry land in Survey No.158/9 with other lands in Survey Nos.154 and 158 of the same village were selected for provision of house sites for the welfare of the Adi Dravidars. Acquisition of the above said land was initiated initially under the Land Acquisition Act, 1894 (Central Act 1 of 1894) and thereafter, under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978 - in short, "the Act"). Pursuant to the notice under Section 4 (2) of the Act, the petitioner submitted his objection. It is the claim of the petitioner that his objection was forwarded to the District Collector along with remarks of the Special Tahsildar (ADW). However, the District Collector without applying his mind and without affording opportunity to the petitioner, mechanically passed an order accepting the proposal. The learned Judge, based on the information in the counter affidavit, after finding that all legal formalities have been strictly observed, dismissed the writ petition; hence, the present writ appeal.

4. It is not in dispute that under the provisions of Tamil Nadu Act, if the land is required for the purpose of Harijan Welfare Scheme, it is incumbent on the part of the District Collector that after satisfying himself and by publishing the same in the District gazette he can acquire the said land. Sub-section (2) of Section 4 of the Act mandates that before publishing notice under sub-section (1), the District Collector or any officer authorised by the District Collector, shall call upon the owner or any other person interested in such land, to show cause why it should not be acquired. Sub-section (3) of Section 4 of the Act makes it clear that either the District Collector himself or any officer authorised by him to issue show cause notice to the land owner or other person and after getting explanation or objection, the authorised officer is to make a report to the District Collector containing the recommendation on the cause so shown for the decision of the District Collector. Section 4(3-b) mandates that after considering the report of the officer authorised, the District Collector may pass appropriate orders, as he may deem fit. The above said provision has been considered by the Full Bench of this Court in the case of R. Pari vs. The Special Tahsildar, Adi-Dravidar Welfare, Devakkottai (2006 (4) CTC 609). The following conclusion of the Full Bench is relevant.

> "43. In view of the aforesaid discussion, our conclusions are as follows:
>
> The owner should be furnished with a copy of the report/recommendation of the authorised officer. Thereafter, he should be given two weeks' time to make further representation, if any, before the District Collector. It is not necessary for the District

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> Collector to give a further personal hearing or make any further enquiry. However, mere non-furnishing of the report would not have the ipso facto effect of vitiating the proceedings and the question of prejudice to the land owner is required to be considered in each case depending upon the facts and circumstances. The District Collector is expected to reflect the reasons, but merely because the communication to the land owner does not contain the reasons the decision of the Collector is not ipso facto vitiated and it would always open to the concerned authority to prove before the Court, if such action of the Collector is challenged, that there has been application of mind and the reasons are available in the relevant records relating to such acquisition. The necessity to record the reasons is applicable where the Collector himself makes the enquiry and also where the Collector takes an appropriate decision on the basis of the report/recommendation made by he authorised officer."

5. It is clear that though there is no incumbent on the part of the District Collector to give further personal hearing to make any further enquiry after receipt of the objection by the land owner, however, it is clear from the above referred Full Bench decision that the District Collector is expected to reflect the reasons in his order. It is also clear that even if the order of the District Collector does not contain reasons, the records must contain the relevant material for satisfaction of the Collector. In the case on hand, learned Government Advocate fairly states that though he is having all the records, the file does not contain the order/decision of the District Collector. In such circumstances, it is not clear whether the District Collector applied his mind with reference to the objection of the land owner and also the report of the Special Tahsidlar.

6. It is also brought to our notice the decision of A.K. Rajan,J. dated 15.10.2004 made in W.P.No.8949 of 1997, wherein he learned Judge in respect of the very same acquisition proceedings relating to other land owners, after finding that the order of the District Collector does not refer the report of the Tahsildar or objection of the land owner, quashed the notification issued under the Tamil Nadu Act and allowed the writ petition. The said reasoning is also applicable to the case of the petitioner/appellant.

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7. The above said relevant aspect has not been adverted to by the learned Judge and committed an error in dismissing the writ petition. For the reasons mentioned above, the order of the learned single Judge dated 13.10.2003, is set aside and the acquisition proceedings are quashed. Consequently, the writ appeal is allowed and the connected miscellaneous petition is closed. No costs. It is made clear that, if the respondents so desire, they are free to initiate fresh proceedings in accordance with law.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Special Tahsildar (ADW)
Devakottai
Sivaganga District.

2.The District Collector
Sivaganga District
Sivaganga.

+1cc to Mr.s.Natarajan, Advocate SR 19172
+1cc to Govt. Pleader Sr 19158

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